



**ISSUES**

Respondent appeals the decision by the Administrative Law Judge finding this claim compensable for preliminary hearing purposes and ordering payment of medical bills and authorizing a treating physician. The specific issues respondent seeks addressed are as follows:

- (1) Whether the claimant met with personal injury by accident;
- (2) Whether the claimant's accidental injury occurred on the dates alleged;
- (3) Whether the respondent had notice of claimant's accidental injury;
- (4) Whether written claim was made and timely filed;
- (5) Whether any of the medical bills incurred by the claimant were authorized and whether the Administrative Law Judge exceeded his authority in ordering payment of unauthorized medical bills in excess of the statutory limit.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Issues (1), (3) and (4) above, i.e. whether claimant suffered an accidental injury, whether notice was timely given, and whether claim was timely made, are all three listed in K.S.A. 44-534a as issues which shall be considered jurisdictional and subject to review by the Appeals Board. A determination of issue (2) is a prerequisite to determining issues (3) and (4). Whether issue number (5) above is one which the Appeals Board has jurisdiction to review on appeal from a preliminary order will be discussed below.

(1)(2) For purposes of this discussion we will combine the issues (1) and (2) above, i.e. whether claimant met with personal injury by accident and whether the claimant's accidental injury occurred on the dates alleged.

Claimant was the only witness to testify at preliminary hearing. The only other evidence in the record consists of the medical records and reports submitted as exhibits to the preliminary hearing. To the extent claimant's testimony is not contradicted in those medical records, her testimony is uncontradicted. Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless proven untrustworthy. See Hughes v. Inland Container Corp., 247 Kan. 407, 412, 799 P.2d 1011 (1990); Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 197, 558 P.2d 146 (1976).

Claimant has been employed by Bourbon County as caretaker of Elm Creek Lake since March 1, 1991. In July 1991, she injured her back and neck when painting a picnic table. She was painting the underside of a heavy table made of sixteen foot (16') bridge planks with attached bench seats. The wind caught the table and it started to fall. Claimant attempted to block the table and it jerked her off her feet. She described feeling like it snapped her from the top of her head to the toes of her feet. The next morning she could not lift either of her arms. She was treated by a chiropractor in Fort Scott, Kansas

and then changed to Dr. Shepard in El Dorado Springs, Missouri. She regained use of her arms and was able to continue working.

Claimant testified that she continued to have back pain from the neck to her tailbone. She used Ben Gay ointment and pain killers which enabled her to continue working. She did not seek medical treatment again until January 1993. She stated that her pain became gradually worse from July 1991, until January 1993 when she caught cold. The cough associated with the cold made her back pain unbearable. She went to a family practice physician in Girard, Kansas who subsequently referred her to an orthopedic surgeon in Fort Scott, Dr. Mekki Saba. He performed surgery on her low back on October 21, 1993. An MRI also showed a herniation in the cervical spine. Dr. Saba referred claimant to a neurosurgeon in Joplin, Missouri for treatment of that condition. Dr. Majzoub determined her herniation was not severe enough to require surgery and referred claimant back to Dr. Saba. During this period of time claimant was also seen by several other physicians including two cardiologist. A cardiovascular condition was ruled out as a cause of claimant's back, neck and extremity complaints. Dr. Saba opined that the, "Possibility of the cause of her herniation, nucleus pulposus, (sic) level L 4-5 could well be due to history of weight lifting and bending over during her daily work in her occupation." In his office note of October 27, 1993, Dr. Saba reported that the "Patient has asked me whether this condition could be from work. I understood her work involved heavy lifting and bending over. She has been doing this for a very long time. My answer was definitely yes. People who have herniated nucleus pulposus of lumbar spine most probably mostly are due to bending over and lifting heavy weight and that is the mechanism when the disk herniates." Claimant is alleging accidental injury occurred in the course of her employment beginning January 19, 1993 and continuing through February 24, 1994. Although it appears that claimant's initial injury occurred in July, 1991, the uncontradicted evidence is that claimant's job duties did aggravate her condition up through the time she was taken off work for her back surgery in October, 1993. It appears from the medical records in evidence that following claimant's low back surgery and the resulting improvement of her low back condition, treatment then began to focus upon the cervical spine and the upper extremity complaints. However, it is not clear whether there was an aggravation of those symptoms or rather that they became more apparent with the alleviation of the low back pain following surgery. The Administrative Law Judge found for purposes of preliminary hearing that the claimant met with a work-related injury from January 1993 through February 24, 1994. Our review of the record supports that finding.

(3) Whether respondent had notice of claimant's accidental injury.

Claimant testified that she advised the County Commissioners of her original accident of July 1991, which occurred while painting the picnic table. She again discussed her back complaints with the Commissioners when they were out to the lake on an occasion prior to her surgery of October 21, 1993. She told them she had back trouble and that her doctor wanted to perform surgery. She asked if she could shut down the lake and not rent the shelter houses out during her period of recovery from the surgery. She testified that a Commissioner told her that he didn't see how they could do that and the lake had to remain open and to just do the best she could. On cross examination the claimant also related having gone to the County Clerk and telling her about her injury during the time that she was treating with Dr. Shepard in August of 1991. The County Clerk is said to have told her that she would need to fill out a form but that they were all out of the forms at that time so she just gave her an address and telephone number of where to send the doctor's bill. Claimant further testified that she gave that information to her

doctor who wrote out an injury report which he sent to the insurance company. Again, the evidence is uncontradicted that respondent knew of the initial July 1991 injury and of the worsening of claimant's condition to the point where she could no longer do her work and required surgery in October 1993. The finding of the Administrative Law Judge that respondent had notice of the claimant's work related injuries for purposes of preliminary hearing is affirmed.

(4) Whether written claim was timely made and timely filed.

Claimant sent a certified demand letter and Form 15 dated February 15, 1994, to the respondent. The certified mail returned receipt shows delivery on February 17, 1994. The Form E1 Application for Hearing was filed February 25, 1994. K.S.A. 44-520a requires written claim for compensation to be served on the employer within two hundred (200) days after the date of the accident.

K.S.A. 44-557(c) provides:

"No limitation of time in the workers compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be commenced by filing an application with the director within one year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto."

Notice was given as discussed above. There is no indication that the employer filed a report of accident as required by K.S.A. 44-557(a). Even so, written claim was made and filed within 200 days and was timely.

(5) Whether any of the medical bills incurred by the claimant were authorized and whether the Administrative Law Judge exceeded his authority in ordering payment of unauthorized medical bills in excess of the statutory limit.

K.S.A. 44-510 makes it the duty of the employer to provide appropriate medical treatment for work-related injuries. As discussed above, the respondent had notice of injury and prior notice of claimant's recommended back surgery. No effort was made by respondent to change claimant's treating physician or otherwise provide medical treatment. Under these facts the Administrative Law Judge found the treatment of Mekki Saba, M.D. to be authorized and ordered all outstanding orthopedic medical bills to be paid, including reimbursement to claimant for those bills she personally paid. K.S.A. 44-534a gives to the Administrative Law Judge the authority to make a preliminary award of medical compensation upon a preliminary finding that the injury to the employee is compensable. As such the Administrative Law Judge did not exceed his authority in finding the services of Dr. Saba to be authorized and in ordering the payment of his medical bills. This therefore is not an issue over which the Appeals Board has jurisdiction to review on appeal from a preliminary order.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the decision of Administrative Law Judge, John D. Clark, in his Preliminary Hearing Order dated May 2, 1994, should be and is hereby affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 1994.

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BOARD MEMBER

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